77

Supreme Court, U.S.
FILED
07-824 OCT 9 - 2007
OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States

A Condemnation Proceeding IN REM by the Redevelopment Authority of the City of Philadelphia County for the purpose of Redevelopment of North Philadelphia Redevelopment Area Brewerytown Urban Renewal Area Condemnation No. 1 Philadelphia, including certain land improvements and properties

Redevelopment Authority of the City of Philadelphia,
Respondent,
v.
Alson Alston,
Petitioner.

On Petition for Allowance of Appeal
To The Pennsylvania State Supreme Court

PETITION FOR WRIT OF CERTIORARI ON BEHALF OF THE PETITIONER ALSON ALSTON

Alson Alston
2836 W. Girard Avenue
Philadelphia, PA 19130
(215)769-3333 Fax:(215)769-0806

QUESTIONS PRESENTED

1. Was Commonwealth Court's failure to find that Petitioner signed Respondent's settlement agreement under duress an abuse of discretion or a due process violation?

2. Did Commonwealth Court's determination that the instant matter was moot conflict with the case law and violate Petitioner's due process rights?

3. Did Commonwealth Court act inconsistently with the requirements of Pa. R.A.P. 1972 and Pa. R.A.P. 123 in taking up the question of mootness?

4. Did Commonwealth Court's denial of oral arguments violate Petitioner's equal protection rights?

5. Did Commonwealth Court abuse its discretion when it let stand the trial court's grant of a protective order to counsel for Philadelphia City Councilman Darrell Clarke?

6. Did Commonwealth Court abuse its discretion when it let stand the trial court's violation of the law of the case doctrine, overruling of preliminary objections, misconduct and other violations?

PARTIES TO THE PROCEEDINGS

Only the parties named in the caption are parties to these proceedings.

Respondent Redevelopment Authority is a Commonwealth of Pennsylvania government agency with the statutory authority to condemn real estate through eminent domain.

Petitioner Alston has had two properties seized under eminent domain by the Respondent Redevelopment Authority.

TABLE OF CONTENTS

Section	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
TABLE OF CONTENTS	ii
TABLE OF CITED AUTHORITIES	iii
APPENDIX TABLE OF CONTENTS	iii
CITATIONS OF REPORTS OF OPINIONS BELOW	2
STATEMENT OF JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	3
ARGUMENT	15
CONCLUSION	24
APPENDIX	A-i

APPENDIX TABLE OF CONTENTS

Item	Page
Honorable David H. Souter's approval of Application for Extension of Time, 8/23/2007.	A-1a
Denial of Petitioner's Petition for Allowance of Appeal by Pennsylvania Supreme Court filed May 25, 2007.	A-2a
Commonwealth Court Opinions and Orders.	A-3a
Common Pleas Court Opinions and Orders.	A-11a
Additional Exhibits form Companion Matter.	A-18a

TABLE OF CITED AUTHORITIES

CASES

Cleaveland v Richardson, 132 US 318, 33 L Ed 384, 10 S Ct 108 17

In re Gross, 476 Pa. 203, 382 A.2d 116 (1978) 18

Newburyport Water Co. v. Newburyport, 193 U.S. 561 (U.S. 1904) 3, 15

STATUTES

28 U.S.C. § 1257(a) 2

28 U.S.C. 2101(c) 2

Eminent Domain Code (26 P.S. §1-101 *et. seq.*) 5, 6, 8, 11, 16, 19

RULES

Pa. R.A.P. 123 22

Pa. R.A.P. 1972 22

CONSTITUTIONAL PROVISIONS

Fifth Amendment to US Constitution 3, 20
Fourteenth Amendment to US Constitution 3, 20

No. _____

In The
Supreme Court of the United States

A Condemnation Proceeding IN REM by the Redevelopment Authority of the City of Philadelphia County for the purpose of Redevelopment of North Philadelphia Redevelopment Area Brewerytown Urban Renewal Area Condemnation No. 1 Philadelphia, including certain land improvements and properties

Redevelopment Authority of the City of Philadelphia,
Respondent,
v.
Alson Alston,
Petitioner.

On Petition for Allowance of Appeal
To The Pennsylvania State Supreme Court

PETITION FOR WRIT OF CERTIORARI ON BEHALF OF THE PETITIONER ALSON ALSTON

CITATIONS OF REPORTS OF OPINIONS BELOW

The opinion of Common Pleas Court, overturning the Petitioner's preliminary objections, is unpublished.

The opinion of Commonwealth Court, affirming the dismissing the appeal as moot before issuing a decision on the merits of the matter, filed October 6, 2006, is unpublished.

The Pennsylvania Supreme Court, declining to review the Commonwealth Court decision, did not issue an opinion.

STATEMENT OF JURISDICTION

This Petition seeks review of a Supreme Court of Pennsylvania order denying Petitioner's Petition for Allowance of Appeal on May 25, 2007. On August 13, 2007, Petitioner filed for an extension of time within which to file this Petition for Writ of Certiorari. On August 23, 2007, Justice Souter, pursuant to 28 U.S.C. 2101(c) and Supreme Court Rule 13.1, granted an extension until October 7, 2007. Since that date was a Sunday and Monday, October 8, 2007 was a federal holiday, the due date for this Petition became October 9, 2007, which is the date it is being submitted.

The United States Supreme Court has jurisdiction over final judgments or decrees rendered by the highest court of a State, pursuant to 28 U.S.C. § 1257(a). This matter, therefore, is properly before this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides, in relevant part:

> No person ... shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Fourteenth Amendment provides, in relevant part:

> Section 1.
> No State shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

There are three constitutional issues involved in this case.

First, the Petitioner maintains that the settlement signed by Petitioner was signed under duress and, therefore, its enforcement voidable. As in *Newburyport Water Co. v. Newburyport*, 193 U.S. 561 (U.S. 1904), the Petitioner argues that the Redevelopment Authority's settlement agreement, which forced Alston to relinquish all rights to one property being taken through eminent domain, so that he might save another, is a contract signed under the threat of a compulsory purchase. It is a contract made under duress because it, "though

voluntary in appearance, becomes thereby compulsory in fact and in law, and is obtained by **duress**."

Second, the Petitioner argues that the Commonwealth Court erred when it found that the instant matter became moot once the settlement was signed. As in *G. Gunther, Constitutional Law* 1578 (9th ed. 1975), Petitioner argues that since the settlement agreement is void, the ongoing eminent domain taking of the subject property is the "actual controversy [that] must be extant" for mootness to be surmounted.

Third, the Commonwealth Court committed due process violations when it refused to allow Petitioner oral argument because, by inference from conversations Petitioner had with the court's clerks, he was acting *pro se*. Had Petitioner been an attorney, he would have been granted oral argument to illuminate key aspects of this complex case for the honorable judges.

Finally, there are other due process and equal protection violations committed by the lower courts with respect to other issues that, admittedly, can only be addressed once the duress, mootness and oral argument questions are resolved.

These federal questions were raised by Petitioner in his filings to Common Pleas Court, Commonwealth Court and the Pennsylvania Supreme Court.

A. BACKGROUND OF THE PENNSYLVANIA STATE SUPREME COURT JUDGMENT

Before the Pennsylvania Supreme Court, Petitioner filed a Petition for Allowance of Appeal. It was denied without offering any opinion. Petitioner has no direct information regarding why his pleading was rejected.

All of the federal questions of interest were preserved in the lower courts, as described later in this Petition.

B. THE PROCEEDINGS BELOW

1. Chronology

This is an appeal of an eminent domain matter with significant implications for all eminent domain targets and *pro se* litigants.

The Redevelopment Authority began its condemnation proceedings against the subject property (1228 N. 30th Street, Philadelphia) on July 24, 2003, according to the civil docket. Notice of the Declaration of Taking was never served on Petitioner Alston. The first documentation of any sort regarding the condemnation received by the Alston was on approximately October 7, 2004.

Alston filed his Preliminary Objections to the Declaration of Taking less than 30 days later, on November 4, 2004.

On July 25, 2005, the Redevelopment Authority deposed its employee, Hope Yusem, the Project Manager for the eminent domain proceedings against the subject property. She falsely identified certified mail receipts in a failed attempt to

demonstrate that Petitioner had been served in a timely fashion.

In the *Philadelphia Weekly* article, "Strange Brew," which was printed in the August 10, 2005 edition, the following passage appeared:

> RDA spokesperson Frank Keel characterizes Alston as a world-class rabblerouser. "He is no more than a land speculator who cloaks himself in the guise of a community activist."

Alston deposed the following individuals in an effort to uncover the unlawful, arbitrary and capricious nature of the eminent domain proceedings:

- Herb Wetzel, Executive Director of the Redevelopment Authority
- Melvis Dunbar, Redevelopment Authority's Director of Relocation and Property Management Services, reporting directly to Wetzel.
- Michael Koonce, Redevelopment Authority's Director of Real Estate Services, reporting directly to Wetzel, and who served as a manager of Hope Yusem from the time prior to the commencement of the eminent domain taking thru the day of the deposition
- Gary Williams, Community Planning Liaison, employee of Fifth District Councilman Darrell Clarke, who has served in a "property acquisition" capacity for new development in the district for approximately the last 10 years.
- Melvin Smith, Research Analyst, employee of Fifth District Councilman Darrell Clarke, who

served as someone who had been "handling" (in his own words) new development in the district for at least the last 10 years.

- Zenobia Harris, Administrative Assistant, employee of Fifth District Councilman Darrell Clarke, responsible for "zoning matters" (her own words) in the district.

In the depositions of Redevelopment Authority's Executive Director Wetzel and Director Koonce, the Redevelopment Authority stated conflicting roles for Keel. Wetzel stated that he did not employ or direct Keel and that Keel was not a spokesman for Wetzel or the Redevelopment Authority, just a paid contractor with the Redevelopment Authority's Board of Directors. However, Koonce stated that Keel was, in fact, a spokesperson for the Redevelopment Authority, in conformance with the "Strange Brew" quotation, and that he took direction from Wetzel.

Alston served subpoenas on Fifth District Councilman Darrell Clarke and Alston spokesperson Keel on or about August 19, 2005.

Alston repeatedly asked Redevelopment Authority's attorney Peter A. Galante and the Philadelphia Law Department for mutual agreement, under Pa. R.C.P. 4002, to depose Redevelopment Authority spokesman Frank Keel and Councilman Clarke.

Galante repeatedly informed Alston that the Redevelopment Authority would not represent Keel because, alternately, (a) "Keel is an independent contractor, not an RDA employee" and (b)"Keel does not work for Herb Wetzel, he works for the RDA Board."

On August 30, 2005, the City of Philadelphia filed for a protective order to prevent Alston from deposing City Councilman Darrell Clarke, a man who has issued quotations in newspapers that are contrary to a positive image of Alston. On September 15, 2005, Honorable Carrafiello moved the date by which an answer to the motion must be received from Alston to September 30, 2005.

Alston worked diligently to comply with Honorable Carrafiello's September 15, 2005 order, but fought against extraordinary odds, given that Alston was also representing himself (and indirectly his community) and had deadlines associated with: (a) Two zoning appeals before Commonwealth Court; (b) A second eminent domain matter, also sponsored by Councilman Clarke; (c) A petition for writ of certiorari before the US Supreme Court, on a zoning matter.

Alston received continuances from Associate Justice David H. Souter on the basis that this extraordinary schedule resulted from matters that were unknown, unforeseen and uncontrollable by Alston.

Despite the concurrent nature of these four cases, the continuances granted, and the instant matter, the Alston still delivered his response to the Motion on September 30th, as ordered, but he arrived only moments after the motions filing office had closed.

When the office reopened on the next business morning, on October 3, 2005, Alston promptly filed his response.

Pursuant to the Court's order docketed September 15, 2005, Alston's response contained a list of specific topics he wished to ask Clarke and

specific reasons for each and every topic. He captured a history of antagonistic actions and statements by Clarke and Clarke's staff that provided evidence for the argument that Clarke's sponsorship of the taking was a result of Clarke's contempt for Alston, not a matter of the lawful exercise of Clarke's duties as City Councilman. Alston provided a memorandum of law describing and justifying the legal grounds for the deposition.

On October 11, 2005, Honorable Common Pleas Court Judge Matthew Carrafiello granted the Motion for Protective Order, stating that Alston "failed to comply" with that Court's September 15th order which specified how Alston was to respond to the Motion. He did not explain what he meant by "failed to comply."

On October 24, 2005, Alston filed a Motion to Vacate Honorable Carrafiello's October 11th order granting the Motion for Protective Order for Councilman Clarke, on the grounds that Alston did, in fact, comply in every material manner with the September 15th order, no party was prejudiced and the deposition of Clarke was critical to the determination of preliminary objections. The response date was November 14, 2005.

In a final effort to depose Keel, Alston caused an additional subpoena to be served on Frank Keel on or about October 31, 2005.

On November 7, 2005, an attorney representing the Redevelopment Authority, Vern Anastasio, indicated that he, in fact, also represents Keel, by filing a Motion to Quash the Keel subpoena. This representation of Keel was in direct opposition to the statements of Redevelopment Authority's

counsel Galante, who had repeatedly insisted that the Redevelopment Authority did not represent Keel.

Also on November 7, 2005, this Court issued an order overruling Alston's Motion to Determine the Preliminary Objections.

On November 18, 2005, the Redevelopment Authority filed his answer to Alston's Motion to Vacate order granting protective order. This was four (4) days after the required date, per the court docket.

On November 28, 2005, Alston responded to the Motion to Quash, stating that it was without merit.

On November 30, 2005, Honorable Matthew D. Carrafiello issued an order refusing to reconsider his earlier order granting the protective order preventing deposition of Councilman Clarke. He stated that the matter was now moot since Honorable Gary S. Glazer had already overruled Alston's preliminary objections.

On December 2, 2005, Alston filed Motion to Vacate Overruling of Preliminary Objections.

On December 5, 2005, Motion to Quash was assigned to Honorable Glazer. Two days later, it was reassigned from Honorable Glazer to Honorable Carrafiello. Eight days later, it was reassigned, again, this time from Honorable Carrafiello back to Honorable Glazer. Honorable Glazer later ordered that he was not required to rule on Motion to Quash because the matter was under appeal.

On December 7, 2005, Alston appealed to Commonwealth Court.

On January 4, 2006, Honorable Glazer dismissed Alston's Motion to Vacate Overruling Preliminary Objections.

After the parties filed their briefs and respective reproduced records in Commonwealth Court, Petitioner asked that court to permit oral argument. He argued that (a) the briefs addressed questions related to multiple orders issued over a three-year period; (b) There were a total of five volumes in the reproduced record and; (c) Petitioner was planning to file a reply brief (adding additional complexity to the matter).

On June 26, 2006, that court denied the application for oral argument, without issuing an opinion.

Petitioner later learned from the Commonwealth Court Prothonotary that requests for oral argument from *pro se* litigants are "rarely" granted.

Petitioner asked for reconsideration *en banc*, with oral arguments.

That court declined to reconsider its order.

On June 30, 2006, Respondent first attempted to settle a different eminent domain matter regarding the property known as 3117 Master Street, 372 CD 2006. (Exhibit B-1)

Petitioner entered into verbal negotiations with Respondent. Petitioner objected vehemently to the proposition that he would have to lose title to the subject property in the instant matter so that he could obtain title, once again, to 3117 Master Street.

On July 7, 2006, after Respondent stated to Petitioner that it stood by its offer of June 30, 2006 "without deviation," Petitioner signed an agreement under duress. (Exhibit B-2)

Also on July 7, 2006, Respondent acknowledged receipt of the aforementioned letter agreement. (Exhibit B-3)

The final agreement signed by Petitioner and Respondent on or about July 28, 2006 ("the July 28th agreement"), did not, in fact, deviate from the June 30, 2006 original proposal. (Exhibit B-4)

Consistent with the agreement, Petitioner attempted to withdraw his appeal of 372 CD 2006 without prejudice. The Court granted that motion, but not until Respondent had argued that the July 28th agreement made both that matter and the instant matter moot.

Respondent's argument in 372 CD 2006 led Commonwealth Court to order Petitioner to respond to the suggestion of mootness *in the instant matter*, to which Petitioner fully complied.

On October 6, 2006, Commonwealth Court dismissed the appeal, stating that the matter was moot.

Petitioner applied for reconsideration *en banc* with oral arguments, stating that the opinion must be reversed because (a) its finding that there was a settlement was easily demonstrated incorrect by the very duress that the Court refused to entertain; (b) its reasons for ignoring the duress argument were not founded in statute or the case law; (c) there were equal protection violations; (d) the matter of mootness was not properly before that court.

On November 14, 2006, Commonwealth Court denied the Motion for Reconsideration.

On December 14, 2006, Alston filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court. The petition was denied, without the issuance of an opinion on May 25, 2007.

On August 13, 2007, Petitioner filed for an extension of time within which to file this Petition for Writ of Certiorari. On August 23, 2007, Justice

Souter granted an extension until October 7, 2007. Since that date was a Sunday and Monday October 8, 2007 was a federal holiday, the due date for this Petition became October 9, 2007, which is the date it is being submitted.

2. Federal Questions Raised

All of the federal questions of interest were preserved at the lower levels of these proceedings. In his Petition for Allowance of Appeal before the Pennsylvania Supreme Court, Petitioner wrote:

- The established practice of Commonwealth Court to deny oral argument to pro se litigants, except in "rare" circumstances, is an equal protection violation.
- In declining to address whether Petitioner signed a settlement agreement with the Respondent RDA under duress, Commonwealth Court ignored legal precedent of the US Supreme Court ....
- In taking up the question of mootness, Commonwealth Court ... deprived Petitioner of his due process rights.

Among other federal precedents, Petitioner cited *Newburyport Water Co. v. Newburyport*, 193 U.S. 561 (U.S. 1904) and *Cleaveland v Richardson, 132 US 318, 33 L Ed 384, 10 S Ct 108.*

In the Pennsylvania Supreme Court petition, Petitioner also advanced arguments regarding the pre-mootness decisions, arguments that clearly contain federal analogues, as in the following passage:

BEST AVAILABLE COPY

> In not addressing the instant matter on its merits, the lower court let stand, without punishment, violations of the law of the case doctrine, attorney and official misconduct by Respondent RDA, and a failure by public and elected officials to surrender for deposition.

All of these arguments were also made at the Commonwealth Court level.

At the lower court level, the questions regarding whether the eminent domain taking was lawful are federal because the right to eminent domain takings is granted from the Fifth Amendment.

ARGUMENT

I.	**THE WRIT OF CERTIORARI SHOULD BE GRANTED BECAUSE, IN DECLINING TO ADDRESS WHETHER PETITIONER SIGNED A SETTLEMENT AGREEMENT WITH THE RESPONDENT RDA UNDER DURESS, THE PENNSYLVANIA SUPREME AND COMMONWEALTH COURTS IGNORED LEGAL PRECEDENT OF THE US SUPREME COURT AND ISSUED AN OPINION THAT CANNOT STAND LEGAL SCRUTINY. THE MATTER WAS NOT MOOT.**

In *Newburyport Water Co. v. Newburyport*, 193 U.S. 561 (U.S. 1904), the United States Supreme Court held, in an eminent domain matter, that:

> While ordinarily what may be lawfully done may be lawfully threatened, yet if the government, or an officer of the government acting under color of office, threatens an individual with serious loss, unless the individual will make a contract to do something not required by law, -- different from that required by law, -- and if the contract is made under the influence of such threat, such contract, though voluntary in appearance, becomes thereby compulsory in fact and in law, and is obtained by **duress.**

The Supreme Court further held that:

> **Duress** may be caused by a declaration of a probable or a certain evil to come, giving to the party threatened a choice of evils. ... a "taking" for public use under a statute is the equivalent of a "compulsory purchase." ... The effect of the right of ***eminent domain*** against the individual "amounts to ... a power to oblige him to sell and convey."

With respect to the July 28th agreement, upon which Respondent and the lower court rely for their conclusion that the instant matter is moot, all of the elements for duress of property are present:

a. Respondent RDA threatens the continued use of eminent domain -- without any further opportunity for settlement -- in the taking of 3117 Master Street and the subject property **unless** Petitioner surrenders his right to fight the eminent domain taking of subject property.
b. There is nothing in Pennsylvania's Eminent Domain Code (26 P.S. §1-101 *et. seq.*) that requires Petitioner to surrender his right to fight an eminent domain taking. Therefore, the requirement that Petitioner drop his appeal in the instant matter is "different from that required by law."
c. The July 28th agreement, as noted in Exhibit B-4, was clearly signed under the influence of such an unlawful demand.
d. The **threat** of the continued use of eminent domain is equivalent to *Newburyport's* circumstance of when "the government, or an officer of the government acting under

color of office, threatens an individual with serious loss." This is the threat of a "compulsory purchase," again from *Newburyport*.

e. Therefore, the July 28th agreement, which is a contract signed under the threat of a compulsory purchase, is a contract made under duress because it, "though voluntary in appearance, becomes thereby compulsory in fact and in law, and is obtained by **duress**."

Similarly, citing *Cleaveland v Richardson*, 132 US 318, 33 L Ed 384, 10 S Ct 108, Ballentine's Law Dictionary[1] defines **duress of property** as:

> The refusal of one in possession or control of property of another to surrender the possession or control of it to the owner except upon compliance with an unlawful demand. A contract made by the owner under such circumstances to emancipate the property is to be regarded as made under compulsion and **duress** and is voidable by the owner. 25 Am J2d Dur § 5. [Emphasis added.]

Ballentine's concludes that:

> A contract procured by threats inducing fear of the destruction of one's property, and compelling him to act against his will may be avoided on the ground of **duress**, there being

[1] Ballentine's Law Dictionary, 3rd Edition, © 1969 Lexis Law Publishing, a division of Reed Elsevier, plc.

> in such a case only the bare form of a contract, wholly lacking the voluntary assent necessary for a binding contract. [Emphasis added.]

Per Ballentine's and *Cleaveland*, we can further state that the Respondent has been in possession of both properties since the moment of the filing of the respective Declarations of Taking, because title passed to the Respondent immediately upon such filings[2]. The demand that Petitioner permanently relinquish his property in the instant matter to Respondent, as demonstrated above, is an unlawful demand.

Again, this time per Ballentine's and *Cleaveland*, the July 28th agreement, clearly made by Petitioner to "emancipate the property" at 3117 Master Street, is to "be regarded as made under compulsion and **duress** and is voidable by the owner."

Contrary to the opinion of the lower court, no settlement had been reached, therefore, and the controversy of the subject property in the instant matter remains.

With respect to mootness, *In re Gross*, 476 Pa. 203, 382 A.2d 116 (1978), citing *G. Gunther, Constitutional Law* 1578 (9th ed. 1975), holds that:

---

[2] §1-402a of the Eminent Domain Code states that:

> Condemnation, under the power of condemnation given by law to a condemnor, which shall not be enlarged or diminished hereby, shall be effected only by the filing in court of a declaration of taking, with such security as may be required under section 403(a), and thereupon the title which the condemnor acquires in the property condemned shall pass to the condemnor on the date of such filing, and the condemnor shall be entitled to possession as provided in section 407.

> The cases presenting mootness problems involve litigants who clearly had standing to sue at the outset of the litigation. The problems arise from events occurring after the lawsuit has gotten under way -- changes in the facts or in the law -- which allegedly deprive the litigant of the necessary stake in the outcome. The mootness doctrine requires that "an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.".

Clearly, Petitioner has a significant stake in the outcome and his allegation of duress refutes any counter-assertion that there was a lawful settlement. The actual controversy of an eminent domain matter is still extant and, therefore, the matter is not moot.

In arguing that the apparent settlement was signed under duress and was thus invalid, Petitioner cites the above from the case law. The Commonwealth Court, however, in refusing to examine whether the apparent settlement was actually signed under duress, deprived that court of the logical foundation required of a well-reasoned opinion in the instant matter. That refusal deprives Petitioner of justice and allows the lower court to be a party to the unlawful seizure of Petitioner's private property. The opinion, therefore, must be reversed.

II.	**THE WRIT OF CERTIORARI SHOULD BE GRANTED BECAUSE THE ESTABLISHED PRACTICE OF COMMONWEALTH COURT TO DENY ORAL ARGUMENT TO PRO SE LITIGANTS, EXCEPT IN "RARE" CIRCUMSTANCES, IS AN EQUAL PROTECTION VIOLATION. PRO SE LITIGANTS MUST BE GIVEN THE SAME OPPORTUNITIES FOR ORAL ARGUMENT AS ADVOCATES WHO ARE LAWYERS.**

The Fifth and Fourteenth Amendments to the U.S. Constitution deny effect to adjudications unless the parties to be heard were given prior notice and an opportunity to participate.

Numerous conversations between Petitioner and the Commonwealth Court Prothonotary's office have revealed that it is the practice of that court to deny oral arguments to *pro se* litigants, except in rare circumstances. However, that same court grants attorneys oral arguments almost routinely. Pa. R.A.P. 2315(a) states that:

> Oral argument is not a matter of right and will be permitted only to the extent necessary to enable the appellate court to acquire an understanding of the issues presented.

Nowhere in that rule or in any other rule is there a requirement or authority for any court to base a determination as to whether to grant oral argument on the legal training of the petitioner or on whether the petitioner has passed the bar. In the

instant matter, Petitioner sought oral arguments before Commonwealth Court on two occasions, to argue the matters contained in his brief and to argue the question of mootness.

The issues to be decided in this matter ultimately include (a) whether the RDA violated the Eminent Domain statutes in its peculiar settlement offer and (b) the preservation of private property ownership. There are also lingering matters, to be decided later, of service, deposition of a public official, a violation of the law of the case doctrine. There are also allegations that the Redevelopment Authority made false statements under oath and that there was lawyer misconduct. These are all complex issues that require care in their presentation, so that salient points are highlighted. Only oral arguments would permit such clarity and amplification, for the benefit of the lower courts and to ensure that Petitioner has had due process.

Had Petitioner been an attorney, he would have been granted this privilege. That he was not an attorney doomed his application. This unequal treatment is a classic equal protection violation.

These due process and equal protection questions have never been addressed by the lower courts. In the interest of justice, they must be addressed by this Court for the matter at bar. They also have wider implications for the entire Commonwealth and nation.

III.	**IN TAKING UP THE QUESTION OF MOOTNESS, COMMONWEALTH COURT ACTED INCONSISTENTLY WITH THE REQUIREMENTS OF PA. R.A.P. 1972 AND PA. R.A.P. 123. THIS DEPRIVED PETITIONER OF HIS DUE PROCESS RIGHTS.**

Pa. R.A.P. 1972 states that an application for relief, pursuant to Pa. R.A.P. 123, must be filed by a party to advance the question of mootness. Specifically:

> Subject to Rule 123 (applications for relief), any party may move:
>
> (4) To dismiss for mootness.
>
> (7) To quash for any other reason appearing on the record.

This rule does not grant a court specific authority to seek out or advocate for a determination of mootness. When the lower court ordered Petitioner to respond to a suggestion of mootness made in a **different** matter, it relied upon facts not in evidence and, effectively, became an advocate for Respondent RDA.

This was improper, inconsistent with the Rules of Appellate Procedure and denied Petitioner due process.

IV.	**IN NOT ADDRESSING THE INSTANT MATTER ON ITS MERITS, THE LOWER COURTS LET STAND, WITHOUT PUNISHMENT, VIOLATIONS OF THE LAW OF THE CASE DOCTRINE, ATTORNEY AND OFFICIAL MISCONDUCT BY RESPONDENT RDA, AND A FAILURE BY PUBLIC AND ELECTED OFFICIALS TO SURRENDER FOR DEPOSITION.**

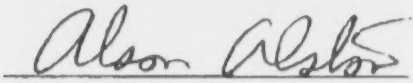
The inaction of the lower courts raises questions about the integrity of the legal process within the Pennsylvania court system and grants powerful government entities license to continue to violate the constitutional rights of Commonwealth residents.

Admittedly, these matters can only be reached by this Court after the determinations of duress, mootness and *pro se* equal protection have been made. However, they are clearly of immense public importance because they impact significant portions of the population and are likely to appear in numerous future cases.

CONCLUSION

Petitioner prays that his appeal will be allowed, thereby protecting the Petitioner's constitutional rights under the Fifth and Fourteenth Amendments, and that this matter will be remanded to Commonwealth Court so that it can be decided on its merits. This will also protect the rights of all other *pro se* litigants and eminent domain victims throughout the Commonwealth and nation.

Respectfully submitted,



Alson Alston, *pro se*

Appendix

APPENDIX CONTENTS

Item	Page
Honorable David H. Souter's approval of Application for Extension of Time, 8/23/2007.	A-1a
Denial of Petitioner's Petition for Allowance of Appeal by Pennsylvania Supreme Court filed May 25, 2007.	A-2a
Commonwealth Court Opinions and Orders.	A-3a
Common Pleas Court Opinions and Orders.	A-11a
Additional Exhibits from Companion Matter.	A-18a

Note: Petitioner could not locate the letter from Justice Souter granting approval for extension of time in which to file this petition. A copy of the docket (online) is provided instead below.

No. 07A158

Title: Alson Alston, Applicant

v.

Redevelopment Authority of the City of Philadelphia, Pennsylvania

Docketed:

Lower Ct: Commonwealth Court of Pennsylvania

Case Nos.: (2439 C.D. 2005)

~~Date~~~	~~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~~~~~
Aug 13 2007	Application (07A158) to extend the time to file a petition for a writ of certiorari from August 23, 2007 to October 07, 2007, submitted to Justice Souter.
Aug 23 2007	Application (07A158) granted by Justice Souter extending the time to file until October 7, 2007.

~~Name~~ ~~~~Address~~~~ ~~Phone~~~

Attorneys for Petitioner

Alson Alston | 2836 W. Girard Avenue
Philadelphia, PA 19130 | (215) 769-3333

Party name: Alson Alston

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

A CONDEMNATION PROCEEDING IN REM BY THE REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA FOR THE PURPOSE OF REDEVELOPMENT OF NORTH PHILADELPHIA REDEVELOPMENT AREA BREWERYTOWN URBAN RENEWAL AREA CONDEMNATION NO.1 PHILADELPHIA, INCLUDING CERTAIN LAND IMPROVEMENTS AND PROPERTIES,

PETITION OF: ALSON ALSTON

No. 635 EAL 2006

Petition for Allowance of Appeal from the Order of the Commonwealth Court

---

ORDER

PER CURIAM

AND NOW, this 25th day of May, 2007, the Petition for Allowance of Appeal is hereby DENIED.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

A Condemnation Proceeding IN REM by the Redevelopment Authority of the City of Philadelphia County for the: purpose of Redevelopment of North Philadelphia Redevelopment Area Brewerytown Urban Renewal Area Condemnation No. 1 Philadelphia, including certain land improvements and properties,

Appeal of: Alson Alston

No. 2439 CD 2005

PER CURIAM

ORDER

NOW, June 26, 2006, upon consideration of appellant's application for oral argument, the application is denied.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

A Condemnation Proceeding IN REM by the Redevelopment Authority of the City of Philadelphia County for the: purpose of Redevelopment of North Philadelphia Redevelopment Area Brewerytown Urban Renewal Area Condemnation No. 1 Philadelphia, including certain land improvements and properties,

Appeal of: Alson Alston

No. 2439 CD 2005

LLW

PER CURIAM

ORDER

Now, June 26, 2006, the above Notice of Appeal shall be submitted on briefs, without oral argument, unless otherwise ordered.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

A Condemnation Proceeding IN REM by the Redevelopment Authority of the City of Philadelphia County for the: purpose of Redevelopment of North Philadelphia Redevelopment Area Brewerytown Urban Renewal Area Condemnation No. 1 Philadelphia, including certain land improvements and properties,

Appeal of: Alson Alston

No. 2439 CD 2005

PER CURIAM

ORDER

NOW; July 10, 2006, upon consideration of appellant's motion for reconsideration en banc of appellant's application for oral argument, the motion is denied.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

A Condemnation Proceeding IN REM by the Redevelopment Authority of the City of Philadelphia County for the: purpose of Redevelopment of North Philadelphia Redevelopment Area Brewerytown Urban Renewal Area Condemnation No. 1 Philadelphia, including certain land improvements and properties,

Appeal of: Alson Alston

No. 2439 CD 2005

PER CURIAM

ORDER

NOW, August 17, 2005, appellant shall file a response to appellee's suggestion of mootness on, or before August 28, 2006.

Certified from the Record
AUG 18 2006
And order exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

A Condemnation Proceeding IN REM by the Redevelopment Authority of the City of Philadelphia County for the: purpose of Redevelopment of North Philadelphia Redevelopment Area Brewerytown Urban Renewal Area Condemnation No. 1 Philadelphia, including certain land improvements and properties,

Appeal of: Alson Alston

No. 2439 CD 2005

Certified from the Record
OCT 10 2006
and Order Exit

PER CURIAM

ORDER

NOW, October 6, 2006, the appeal in the above-captioned matter is hereby **DISMISSED** as moot[1].

In July, 2003, the Redevelopment Authority of the City of Philadelphia (Authority) filed a declaration of taking in the Court of Common Pleas of Philadelphia County (trial court) regarding Alson Alston's property located at 1228 N. 30th Street. In June, 2005, the Authority filed another declaration of taking in the trial court pertaining to 3117-27 W. Master Street, also owned by Alston. Alston filed

preliminary objections in both matters, which the trial court overruled. Thereafter, Alston appealed the trial court's orders in both cases to this Court. This appeal, at docket number 2439 C.D. 2005, pertains to 1228 N. 30th Street; the other appeal regarding 3117-27 W. Master Street was separately docketed at 372 C.D. 2006. On July 13, 2006, Alston and the Authority entered into a Revestment Agreement. The Authority agreed to revest in Alson the title in fee simple for 3117-27 W. Master Street. In consideration, Alston agreed to withdraw both of his pending appeals in this Court, 2439 C.D. 2005 and 372 C.D. 2006. The result of their Agreement was that Alston would keep the property at 3117-27 W. Master Street, and the Authority would proceed with its taking of the property at 1228 N. 30th Street, the subject of this appeal.

On August 9, 2006, Alston filed a motion to withdraw his appeal at 372 C.D. 2006, "even though he signed the Agreement under duress." (Alston's Motion to Withdraw 8/9/2006 at 2.) In response, the Authority argued Alston suffered from no duress: (Continued...)

> [Alston] was fully aware of the terms of the Agreement...which resulted from numerous negotiation discussions. It is categorically denied that [the Authority] caused [Alston] to sign the Agreement under duress. [Alston] signed the Agreement before a witness and notary of his own choosing. [Alston] knew exactly what the terms were and if he did not understand same or agree with them then he was free to reject the Agreement and not sign it. He was under no duress.

(Authority's Response 8/15/2006 at 2.) By way of New Matter, the Authority asserted that if Alston refuses to withdraw both appeals as he agreed to, then the Authority moves to dismiss both appeals as moot. In a per curiam order dated August 17, 2006, this Court dismissed the appeal at 372 C.D. 2006.

On the same day, this Court entered a separate per curiam order in the above-captioned appeal, directing Alston to file a response to the Authority's suggestion of mootness. On August 28, 2006, Alston filed his response, arguing: (1) the record does not suggest this matter is moot; (2) the Agreement he entered into is not enforceable because he signed the Agreement under duress; and (3) the Agreement, even if enforceable, permissibly allows this Court to render a decision on the merits because the Agreement fails to provide a deadline as to when Alston must withdraw his appeals.

Alston's contentions are without merit. The law in this Commonwealth is clear. A case or controversy must exist at *all* stages of the judicial process. County Council of County of Erie v. County Executive of County of Erie, 600 A.2d 257, 259 (Pa. Cmwlth. 1991). Otherwise, the case will be rendered moot and dismissed. Id. In Erie insurance Exchange v. Clavpoole, 673 A.2d 348, 351-52 (Pa. Super. 1996), the appellant settled several tort claims with the appellees after the trial court entered summary judgment in favor of the appellees. Soon thereafter, the appellant filed a notice of appeal. The Superior Court held "an actual case or controversy no longer existed between [the appellant] and [the appellees]"

by virtue of the signed settlement agreement. Id. at 353.

Here, because Alston entered into the Agreement with the Authority, this appeal is moot. Similar to the facts in Clavpoole, the Agreement here resolves the controversy between the parties, and "no effect could be given to our resolution." Id. at 354. Furthermore, Alston's assertion of duress is unavailing. He accepted the benefit of the Agreement by regaining title to one of his properties and withdrawing that appeal, yet he argues in this appeal that the same Agreement is unenforceable as to the property to which the Authority did not revest title in him. We do not find any support for such an argument and decline to entertain it.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

A Condemnation Proceeding IN REM by the Redevelopment Authority of the City of Philadelphia County for the: purpose of Redevelopment of North Philadelphia Redevelopment Area Brewerytown Urban Renewal Area Condemnation No. 1 Philadelphia, including certain land improvements and properties,

Appeal of: Alson Alston

No. 2439 CD 2005

PER CURIAM

ORDER

NOW, November 13, 2006, upon consideration of Alson Alston's Motion for Reconsideration with Oral Argument En Banc of this Court's Per Curiam Order of October 6, 2006, dismissing Alston's appeal as moot, the Motion for Reconsideration is hereby DENIED.

Certified from the Record
NOV 14 2006
and Order Exit

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

Redevelopment Authority
vs
Alson Alston

NO. November TERM, 2003 NO.2822 /s/ # 05-082448
/s/ Updated to 9-30-05

ORDER

AND NOW, this 9th day of September, 2005, it is hereby ORDERED that Respondent/Alston has fifteen (15) days, from the date of the docketing of this Order, to respond to the Motion for Protective Order, and to set forth in detail: a) specific topics of questions he wishes to ask deponent Clark, and b) give specific reasons for said questions.

BY THE COURT
/s/ Illegible
MATTHEW D. CARRAFIELLO, J.

Received Sep 13 2005
Civil Administration

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

Redevelopment Authority

vs

Alson Alston

July TERM, 2003 NO.2822 /s/ # 05-082448

ORDER

AND NOW, this 11th day of October, 2005, Respondent Alston having failed to comply with this Court's Order of September 9, 2005, Petitioner, City of Philadelphia's Motion for Protective Order is granted.

BY THE COURT
/s/ Illegible
MATTHEW D. CARRAFIELLO, J.

Received Oct 12 2005
Civil Administration

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

A CONDEMNATION PROCEEDING IN REM BY THE REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA FOR THE PURPOSE OF REDEVELOPMENT OF NORTH PHILADELPHIA REDEVELOPMENT AREA BREWERYTOWN URBAN RENEWAL AREA CONDEMNATION NO.1 PHILADELPHIA, INCLUDING CERTAIN LAND IMPROVEMENTS AND PROPERTIES

v.

ALSON ALSTON, CONDEMNEE

JULY TERM 2003 NO. 2822
Control No. 010545

Received Nov 07 2005
Civil Administration

ORDER

AND NOW, this 2nd day of November, 2005, upon consideration of Condemnee Alson Alston's Motion to Determine Preliminary Objections, and the Redevelopment Authority of the Of Philadelphia's Response thereto, it is hereby ORDERED and DECREED that the Preliminary actions are OVERRULED[1].

BY THE COURT

/s/ Illegible
GLAZER, J.

DOCKETED
NOV 07 2005
E. THOMPSON
CIVIL ADMINISTRATION

COPIES SENT
PURSUANT TO
Pa.R.C.P.236(b)
NOV 07 2005
FIRST JUDICIAL
DISTRICT OF PA
USER I.D./s/ Illegible

[1] Condemnee argues that Notice of the Declaration of Taking was never served on Condemnee. Since Condemnee filed preliminary objections, the issue of notice is waived In In re Condemnation of Lands of Patterson, 772 A.2d 1176, 1178 Pa. Commw. 1999), Condemnee challenged the notice received of the condemnation in that it failed to specifically inform hat preliminary objections had to be filed in order to object to the taking. The court held that this omission was not prejudicial since preliminary objections were in fact filed. The court opined that "[t]be standard of strict construction d not be applied to non-prejudicial irregularities in the procedural ascents of condemnation proceedings. Patterson, supra., 722 A.2d at 1178 (citation omitted). Condemnee argues that the taking was the result of bias and braided use of governmental power. Condemnee sought to take depositions in support of these allegations. A motion for protective order was filed by the RDA. On September 9, 2005, the Honorable Judge Carrafiello directed Condemnee to set forth in detail specific topics of questions to be asked of deponents and to give specific reasons for said questions. This motion was granted based upon

the fact that Condemnee failed to comply with the court's order. Numerous extensions of time were granted to complete the record. Therefore, the preliminary objections are overruled.

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

Redevelopment Authority

vs

Alson Alston

July TERM, 2003 NO.2822 Control # 05-101793

ORDER

AND NOW, this 29th day of November, 2005, Petitioner Alson Alston's Motion to Vacate Order of October l l, 2005 is dismissed as moot in that Preliminary Objections were determined by Order dated November 2, 2005.

BY THE COURT
/s/ Illegible
MATTHEW D. CARRAFIELLO, J.

Received Nov 30 2005
Civil Administration

COPIES SENT
PURSUANT TO
Pa.R.C.P.236(b)
NOV 07 2005
FIRST JUDICIAL
DISTRICT OF PA
USER I.D./s/ Illegible

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

A CONDEMNATION PROCEEDING IN REM BY THE REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA FOR THE PURPOSE OF REDEVELOPMENT OF NORTH PHILADELPHIA REDEVELOPMENT AREA BREWERYTOWN URBAN RENEWAL AREA CONDEMNATION NO.1 PHILADELPHIA, INCLUDING CERTAIN LAND IMPROVEMENTS AND PROPERTIES

v.

ALSON ALSTON, CONDEMNEE

JULY TERM 2003 NO. 2822
Control No. 010545

Commonwealth Court No: 2439 CD 2005

OPINION

Glazer, J. December 15, 2005

Received 05 Dec 15 PM 3:16
PROPROTHY

PROCEDURAL AND FACTUAL HISTORY

On July 24, 2003, petition of declaration of taking was filed. Proof At service of notice condemnation upon condemnees was filed on

September 9, 2003. On November 4 ,2004, Preliminary Objections to the Declaration of Taking were filed by condemnee Alson Alston, pro se. On January 26, 2005, the Honorable Judge Matthew D. Carrafiello, upon consideration of the Redevelopment Authority of the City of Philadelphia's Motion to Overrule Preliminary Objections, ordered the parties to file concise memorandums on the issue of cause shown for the late Filing Or the Preliminary Objections. On Aprill4,20DS, the Redevelopment Authority was directed to file response t the Preliminary Objections. On June 24, 2005, Judge Carrafiella entered an Order directing that depositions and/or discovery be taken by the parties on the actual issues raised in Condemnee's Preliminary Objections. On November 2, 2005, docketed November 7, 2005, this court overruled Preliminary Objections. On December 12, 2005, this court received notice that condemnee, Alson Alston, has appealed to the Commonwealth Court of Pennsylvania from the order entered on November 7, 2005

DICUSSION

This court adopts, as its opinion on appeal, the footnote appended to the November 2, 2005 Order. That footnote is incorporated herein by reference. This court asks that is November 2, 2005 Order be affirmed.

BY THE COURT
/s/ Illegible
GLAZER, J.

PETER A.GALANTE
ATTORNEY AT LAW
TWO PENN CENTER PLAZA - SUITE 1310
15TH STREET & JFK BOULEVARD
PHILADELPHIA. PA 19102

(215) 557-8199

June 30, 2006

Alson Alston
2836 W. Girard Avenue
Philadelphia, Pa. 19130'

Re: 1228 N. 30th Street and 3117-19 Master Street
2439 C.D. 2005 and 372 C.D. 2006

Dear Mr. Alston:

My client has asked me to make an attempt to amicably resolve the above matters.

I am prepared to recommend to my client that these matters be resolved on the following basis:

1. Title to condemned premises 3117-19 Master Street to be revested to you by written agreement to be recorded as provided for under the last sentence of 408 of the eminent domain code (26 P. S. 1-408) and upon revestment duly recorded you will withdraw your Commonwealth Court appeal (372 C.D.2006).

2. That you as condemned (Appellant) withdraw your appeal presently pending in

Commonwealth Court (2439 C.D. 2005) in regard to premises 1228 N. 30th Street and allow you without objection to file a petition for the Appointment of a Board of Viewers under section 502 (a) (1)-(6) (26 P.S. 1 -502 (a) (1)-(6) so that you can proceed with your claim for damages as it pertains to said property.

I shall appreciate you advising me as to your thoughts in regard to my proposal as soon as possible but not later than July 7, 2006.

Very truly yours,
/s/ Peter A. Galante
Peter A. Galante, Esquire

Alson Alston
2836 W. Girard Ave.
Philadelphia, PA
19130

July 7, 2006

Peter A. Galante, Esquire
1310 Two Penn Center Plaza
15th Street and JFK Blvd.
Philadelphia, PA 19102

RE: Settlement Offer in 2439 CD 2005, 372 CD 2006

Dear Mr. Galante:

Per our telephone conversation moments ago in which you stated that your client accepted the settlement terms of your letter dated June 30, 2006 without deviation, I am writing to respond formally to your offer.

First, as I noted to you previously, there is no reason, based on the Eminent Domain Code or any other standard of law or logic, to link these two cases. The fact that I must lose one property to save another causes me, as you might understand, intense anguish, anxiety and other extremely unpleasant emotions that I choose not to express.

However, I believe that I have no choice but to accept your offer. I would like an agreement in principle as soon as possible, with the final agreement prepared in due course.

VERIFICATION The undersigned verifies that the facts set forth above are true and accurate to the best of the knowledge, information and belief of the undersigned. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

Dated: /s/ 7/7/06

Alson Alston

/s/ A. Alston
Signature

[Fax header] Illegible
01:56PM P1
/s/ 215-769-0806

Jul. 07 2006

Alson Alston
2836 W. Girard Ave.
Philadelphia, PA
19130

July 7, 2006

Peter A. Galante, Esquire
1310 Two Penn Center Plaza
15th Street and JFK Blvd.
Philadelphia, PA 19102

RE: Settlement Offer in 2439 CD 2005, 372 CD 2006

Dear Mr. Galante:

Per our telephone conversation moments ago in which you stated that your client accepted the settlement terms of your letter dated June 30, 2006 without deviation, I am writing to respond formally to your offer.

First, as I noted to you previously, there is no reason, based on the Eminent Domain Code or any other standard of law or logic, to link these two cases. The fact that I must lose one property to save another causes me, as you might understand, intense anguish, anxiety and other extremely unpleasant emotions that I choose not to express.

However, I believe that I have no choice but to accept your offer. I would like an agreement in principle as

soon as possible, with the final agreement prepared in due course.

VERIFICATION The undersigned verifies that the facts set forth above are true and accurate to the best of the knowledge, information and belief of the undersigned. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

Dated: /s/ 7/7/06

Alson Alston

/s/ A. Alston
Signature

/s/ [Entire block below]
Dear Mr. Alston:

I hereby acknowledge receipt of your acceptance of the settlement recommendation in the above captioned matters set forth in my letter of June 20, 2006.

It is agreed that the matters are settled in principle with details to [Illegible] formal agreement(s).

[Illegible signature]

REVESTMENT AGREEMENT BETWEEN

REDEVLOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA
(GRANTOR)

AND

ALSON ALSTON
(GRANTEE)
PREMISES: 3117-27 W. MASTER ST.,
PHILADELPHIA, PA

THIS AGREEMENT entered into as of this /s/ 13th day of
/s/ July, 2006 by and between the Redevelopment Authority of the City of Philadelphia, 1234 Market Street, 16th Floor, Philadelphia, PA (hereinafter the "Redevelopment Authority" or "Grantor") and Alson Alston, 2836 W. Girard Ave., Philadelphia, PA ("Grantee").

WITNESSETH THAT:

WHEREAS, the Redevelopment Authority is a public body corporate and politic duly created and organized pursuant to and in accordance with the provisions of the Urban Redevelopment Law of May 24, 1945, P.L. 991 and laws supplemental thereto; and is authorized to purchase and acquire land, to exercise the right of eminent domain, to clear buildings thereon, to convey to others for the purpose of redevelopment of said land and buildings, to eliminate blighted areas and areas which are inadequately planned, and to eliminate defective

design and erection of buildings or faulty street or lot layout, or economically or socially undesirable land uses, and in connection therewith to take all such action as is provided for herein; and

WHEREAS, on June 22, 2005 the Redevelopment Authority filed a declaration of taking in the Court of Common Pleas of Philadelphia County, docketed as of June Term 2005, No. 2170 ("Declaration of Takings"), in accordance with the Pennsylvania Eminent Domain Code (26 P.S. §1-101 et seq.) (hereinafter "Eminent Domain Code") and Resolution No. 17,935 adopted by the Board of the Redevelopment Authority on June 14, 2005 that condemned certain properties in fee simple as part of the Brewerytown Urban Renewal Area No. 2; and

WHEREAS, Grantee was the owner of record of certain land and improvements known as 3117-27 W. Master Street, Philadelphia, PA-(hereinafter "Master Street" or "Premises"), as more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the Premises was included in the Declaration of Taking; and

WHEREAS, Grantee filed Preliminary Objections to said Declaration of Taking as well as Preliminary Objections to the Redevelopment Authority's taking of his premises 1228 N. 30th St., as of July Term 2003 NO. 2822, Court of Common Pleas of Philadelphia County; and

WHEREAS, the Preliminary Objections in both cases were overruled by the Court of Common Pleas of Philadelphia County and Grantee filed an Appeal in each matter to, the Commonwealth Court of Pennsylvania as of Appeal Docket NOS. 2439 CD 2005 and 372 CD 2006: and

WHEREAS, the parties hereto wish to resolve these matters; and

WHEREAS, the Redevelopment Authority has made no payment to Grantee for Master Street nor has Grantee tendered possession of same to the Redevelopment Authority; and

WHEREAS, the Redevelopment Authority and Grantee desire to execute and record an agreement containing the terms and conditions set forth below; and

WHEREAS, the Redevelopment Authority has authorized the execution, delivery and recording of this Revestment Agreement pursuant to Resolution No. /s/ 18258 of the Redevelopment Authority adopted /s/ July 25, 2006.

NOW THEREFORE, the parties hereto, each of which intends to be legally bound, in consideration of the premises and mutual undertakings, agree as follows:

1. The legal description of the property to be revested is as shown in Exhibit "A"

2. Upon the execution of this Agreement, title in fee simple to the Premises, to the extent that the Redevelopment- Authority acquired title, shall revest in Grantee as of the date of the filing of the Declaration of Taking, *i.e.*, June 22, 2005.

3. All mortgages, liens and other encumbrances, if any, existing of record against the Premises as of June 22, 2005 shall be reinstated.

4. It is agreed that the Redevelopment Authority and Grantee, their successors and assigns, are released and discharged of any and all liability or obligations arising from the condemnation of Master Street which occurred on June 22, 2005, including but not limited to suits at law or in equity, damages, claims, benefits, compensation, liabilities and obligations which may arise under the Eminent Domain Code and the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and any regulations pursuant thereto.

5. In consideration of the Redevelopment Authority revesting title of the Premises to Grantee, Grantee represents and warrants that the Premises meets City of Philadelphia Code standards and, if it is determined that the Premises do not meet such standards, the Grantee agrees to rehabilitate the Premises to City Code standards within one year of such determination. And further, Grantee agrees to maintain the Premises and the improvements thereon in such manner and in such condition to assure its continuance as a desirable property for so long as Grantee shall be the owner of the Premises;

to remove and keep out the elements of blight and to provide and enforce adequate safeguards to assure such maintenance for so long as Grantee shall be the owner of the Premises.

6. In further consideration of the RDA's revesting title to the Premises to Grantee, Grantee agrees that once this Agreement is executed he will withdraw his appeals currently pending in the Commonwealth Court (docket nos. 2439 CD 2005 and 372 CD 2006) in accordance with the rules of said Court. Grantor and Grantee agree to bear their own costs and counsel fees pertaining to these cases.

7. It is agreed by Grantor that Grantee may file a petition for the appointment of a Board of Viewers in accordance with Section 502(a)(1)-(6) (26 P.S. § 1-502(a)(1)(6) of the Eminent Domain Code in order to ascertain just compensation for premises 1228 N. 30th Street Philadelphia. It is further agreed that if Grantee's petition is in accord with said section 502(a)(1)-(6) the RDA will not file preliminary objections to same and that the RDA and Grantee will present evidence of the fair market value of 1228 N. 30th Street to the Board of Viewers in accordance with the provisions of the Eminent Domain Code. It is understood that either the Grantee or the Grantor may appeal the Board of Viewers' award pursuant to Section 515 of the Eminent Domain Code.

8. Grantee hereby waives any claims he may have against the RDA under Section 408 of the Eminent Domain Code and further agrees to release and hold the RDA harmless from any claims of the mortgagee of the Master Street premises.

9. Grantee shall be responsible for payment of all costs associated with the recording of this Agreement including but not limited to fees payable to the Recorder of Deeds and City and State transfer taxes, if applicable.

IN WITNESS WHEREOF, the Redevelopment Authority and Grantee have caused this Agreement to be executed by their proper representatives and their respective seals affixed and attested the day and year above written,

ATTESTS

REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA

/s/ Herbert Wetzel
HERBERT E. WETZEL
EXECUTIVE DIRECTOR

/s/ Illegible
(CORPORATE SEALS

/s/ Alson Alston
ALSON ALSTON GRANTEE

WITNESS:
/s/ Illegible

COMMONWEALTH OF PENNSYLVANIA :
:
: SS
:
COUNTY OF PHILADELPHIA :

On this /s/ 28th day of /s/ July 2006, before me the undersigned officer, personally appeared Herbert E.Wetzel, who acknowledged himself to be the Executive Director of the Redevelopment Authority of the City of Philadelphia and being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing in the name of the Redevelopment Authority of the City of Philadelphia by himself as Executive Director.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

/s/ Illegible
NOTARY PUBLIC

NOTARIAL SEAL
[Illegible], Notary Public
City of Phila., Philadelphia [Illegible]
[Illegible] 2006

COMMONWEALTH OF PENNSYLVANIA :
:
: SS
:
COUNTY OF PHILADELPHIA :

On this /s/ 13 day of /s/ July 2006, before me the undersigned officer, personally appeared ALSON ALSTON, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

/s/ Illegible
NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
THERESA GORDON. Notary Public
City of Philadelphia, Phila. County
My Commission Expires /s/ June 20
[Illegible] 200 [illegible] 6

Exhibit "A"

ALL THAT CERTAIN lot or piece of ground situated in the Fifteenth Ward of the City of Philadelphia and described as follows:

Beginning at a point on the Northerly Side of West Master Street (50 feet wide) at the distance of 127 feet 9 ½ inches Westward from the West side of West 31st Street (50 feet wide);

Containing in front or breadth along the Northerly side of the said Master Street 72 feet 2 1/2 inches and extending that width in length or depth between parallel lines at right angles to the said Master Street 81 feet 8 ½.

BEING KNOWN as 3117-27 West Master Street.

91

(2)

No. 07-824

FILED
MAR 17 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

A Condemnation Proceeding IN REM by the Redevelopment Authority of the City of Philadelphia County for the purpose of Redevelopment of North Philadelphia Redevelopment Area Brewerytown Urban Renewal Area Condemnation No. 1 Philadelphia, including certain land improvements and properties

Redevelopment Authority of the City of Philadelphia,
Respondent,
v.
Alson Alston,
Petitioner.

On Petition for Allowance of Appeal
To The Pennsylvania State Supreme Court

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI ON BEHALF OF PETITIONER ALSON ALSTON

Alson Alston
2836 W. Girard Avenue
Philadelphia, PA 19130
(215)769-3333 Fax:(215)769-0806

PARTIES TO THE PROCEEDINGS

The parties are the same as indicated in the Petition for Writ of Certiorari.

CITATIONS OF REPORTS OF OPINIONS BELOW

The United States Supreme Court, denying certiorari on February 19, 2008, did not issue an opinion. All other citations are the same as indicated in the Petition for Writ of Certiorari.

STATEMENT OF JURISDICTION

This Petition asks the Court to reconsider its order of February 19, 2008, which denied certiorari in this matter. This Petition is filed within twenty-five (25) days of the February 19, 2008 decision and is based on grounds limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented, thereby meeting the requirements of Supreme Court Rule 44.1 and 44.2.

BACKGROUND - INTERVENING CIRCUMSTANCES OF SUBSTANTIAL EFFECT

On February 13, 2008, this Court received my Motion for Recusal of Justice Samuel Alito. On February 19, 2008, this Court denied certiorari, but the docket does not reflect whether Justice Alito took part in the decision. The proximity of the date the Motion was received and the date of the conference suggests that the Motion was not properly considered by the Court before certiorari was decided.

ARGUMENT

THE MOTION SHOULD HAVE BEEN DECIDED BEFORE THE CONFERENCE WAS HELD.

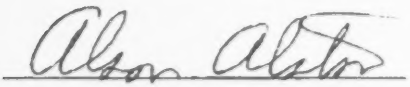
Because this Court did not rule on Petitioner's Motion for Recusal prior to deciding certiorari, it left viable the appearance of impropriety. This is contrary to *Liteky v. United States*, 510 U.S. 540, 548 (1994), which stated that:

> what matters is not the reality of bias or prejudice but its appearance. Quite simply and quite universally, recusal was required whenever "impartiality might reasonably be questioned."

CONCLUSION

Petitioner prays that the denial of certiorari will be vacated so that the Motion for Recusal can be decided prior to the ultimate decision on certiorari.

Respectfully submitted,



Alson Alston, *pro se*